

COASTAL OIL & GAS CORP.

IBLA 87-349

Decided December 13, 1988

Appeal from a decision of the Director, Minerals Management Service, dismissing an appeal as untimely. MS 86-473-O&G.

Reversed and remanded.

1. Minerals Management Service: Appeals to Director: Generally--Oil and Gas Leases: Royalties--Rules of Practice: Appeals: Generally--Rules of Practice: Appeals: Notice of Appeal

In the absence of regulations specifically delineating how service of an invoice by MMS is effectuated, a payor engaged in a business relationship with MMS may specify a particular office or official to whom bills for collection should be directed. Service of an MMS bill for collection is not perfected until receipt by the official previously designated by the payor as the official to whom such notices should be directed.

APPEARANCES: Hugh V. Schaffer, Esq., and Andrew A. Brodkey, Esq., Denver, Colorado, for appellant; Howard W. Chalker, Esq., Office of the Solicitor, U.S. Department of the Interior, Washington, D.C., for the Minerals Management Service.

OPINION BY CHIEF ADMINISTRATIVE JUDGE HORTON

On December 18, 1986, the Director, Minerals Management Service (MMS), issued a letter of decision dismissing the appeal of Coastal Oil & Gas Corporation (Coastal) regarding bill for collection No. 07644015. That decision stated that Coastal had not timely filed its appeal with MMS within 30 days of receipt of the invoice as required by 30 CFR 290.3(a). Coastal's notice of appeal was received by MMS on September 17, 1986. ^{1/} The bill for collection, transmitted by certified mail, indicates receipt of the invoice by Coastal on August 15, 1986. The 30th day for filing the notice of appeal would have been September 14, 1986, a non-business day; therefore, the notice of appeal was due on September 15, 1986, the next business day. Compare 43 CFR 1821.2-2(e); 43 CFR 4.22(e).

^{1/} On Sept. 17, 1986, Coastal filed its payment of \$4,700.62 with MMS, a notice of appeal, and request for a 30-day extension within which to file additional documents.

The regulation governing the time limit for appeals to the Director, MMS, 30 CFR 290.3(a), states that "[a]n appeal * * * may be taken by filing a notice of appeal in the office of the official issuing the order or decision within 30 days from service of the order or decision." Although the regulations provide at 30 CFR 290.5 that the Director has discretion to extend the time for filing documents associated with an appeal, the time limit for filing the notice of appeal is expressly excepted. The Board has consistently held that the above provision mandates that a notice of appeal must be received by the Director within 30 days of service of the decision appealed from, and that an untimely appeal is properly dismissed by the Director in accordance with the explicit term of the appeal regulations. Pennzoil Oil & Gas, Inc., 61 IBLA 308 (1982); Texaco, Inc., 51 IBLA 243 (1980); Union Oil of California, 48 IBLA 145 (1980); Mesa Petroleum Co., 44 IBLA 165 (1979).

[1] However, on appeal to the Board from the Director's December 18, 1986, decision, appellant questions the actual date of service of MMS' bill for collection. Appellant states that although the MMS invoice was addressed to the attention of Robert L. Schaffer, Supervisor of Reporting and Coordination, it was attached to an audit letter addressed to Al Moss, Manager, Gas Revenue Accounting. Appellant submits, and the record establishes, that MMS had received written notification from Coastal in May 1986 that notices and bills were to be sent to the attention of Schaffer. Appellant argues that because these instructions were not followed, the bill for collection was not received by Schaffer until August 18, 1986, 3 days after it was received by Moss in another department of the company. Appellant contends that the date the bill for collection was received by Schaffer should be used as the service computation date. Under such date, Coastal's appeal to the Director, MMS, would be timely.

In its answer, MMS asserts that the party being served with the correspondence was "Coastal Oil and Gas Corp.," not Schaffer. Thus, MMS argues that the date of service was the date on which the correspondence was received at the office of Coastal Oil & Gas Corporation, August 15, 1986. MMS further states that it "cannot be held responsible to ensure that billings, notices and other time-sensitive documents are directed to a particular person."

We disagree with MMS. In the absence of regulations specifically delineating how service of agency decisions or invoices is deemed effectuated, and MMS has no such regulations, a payor engaged in a business relationship with MMS should be entitled to specify, through proper advance notice to the agency, a particular office or official to whom selected agency notices should be directed. Compare 43 CFR 1810.2 (establishing the right of one dealing with the Bureau of Land Management to receive mailings at an address of record specified by him). Here, although the bill for collection to Coastal was directed to the attention of Schaffer, it is undisputed that the envelope which contained the correspondence was addressed to and received by Moss, not Schaffer, as specified by appellant.

In view of the strictness of the time limit imposed by 30 CFR 290.3(a) and the unavailability of a grace period for filing (compare 43 CFR 4.401(a)), it is only fair to require MMS to ensure that appealable decisions are accurately addressed. Failure to properly address the envelope containing the bill for collection to the company official expressly denominated by Coastal to receive such notices vitiates constructive service of the subject document. See F. Howard Walsh, Jr., 93 IBLA 297 (1986). We hold that service was not perfected until August 18, 1986, when Schaffer actually received the bill for collection, and that Coastal's appeal to the Director, MMS, was therefore timely filed.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed and the case is remanded to MMS for consideration of the merits of appellant's appeal.

Wm. Philip Horton
Chief Administrative Judge

I concur:

David L. Hughes
Administrative Judge